

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6100**

**BILL NUMBER: SB 35**

**NOTE PREPARED:** Jan 24, 2003

**BILL AMENDED:** Jan 23, 2003

**SUBJECT:** Tort Claims Against Government Entities.

**FIRST AUTHOR:** Sen. Garton

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** Local

**Summary of Legislation:** This bill increases the cap on damages for tort claims against government entities and public employees.

**Effective Date:** July 1, 2003.

**Explanation of State Expenditures:** This bill: (1) increases the maximum amount payable from the Political Subdivision Risk Liability Fund for per occurrence liability and total liability, and (2) increases the combined liability of all governmental entities and public employees acting within the scope of their employment.

(1) The Political Subdivision Risk Liability Fund (Basic) currently does not have any member governmental entities. The fund is established to pay a part of certain liabilities of members of the fund. The fund currently pays a maximum of \$300,000 for injury, death, or damage suffered by any one person as a result of the act or omission from which the liability arises. The current maximum paid for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises is \$1 M. This bill increases the per person liability to \$750,000 for CY 2005 and CY 2006 and to \$1.25 M in CY 2007 and beyond. In addition, this bill increases the total maximum liability for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises to \$1.25 M. The total impact this bill has on expenditures from the fund cannot be estimated at this time and is contingent upon the fund having active members.

*Political Subdivision Risk Liability Fund Background:* The Basic Fund does not currently have any members and was suspended by the Department of Insurance in 1999. The Basic Fund paid a total of \$5,607 in claims for 1998. The Basic Fund pays all liability claims incurred by members, less a deductible. The deductible

varies by member and is determined by the fund administrator and member agreement. Basic Fund members may also enroll in the Political Subdivision Catastrophic Liability Fund. The Catastrophic Fund pays a portion of member liability up to \$5 M.

(2) This bill will potentially increase the per person liability awards that governmental entities would pay as a result of successful lawsuits filed against the state and political subdivisions of the state and public employees. Under current law, damage awards cannot exceed \$300,000 for the injury to, or death of, one person in any one occurrence. This bill increases the per person liability to \$750,000 for CY 2005 and CY 2006 and to \$1.25 M in CY 2007 and beyond. However, this bill does not increase the total liability per occurrence. The per occurrence liability remains \$5 M. Thus, expenditures on a per person basis may increase. The total additional cost to the state is unknown and subject to judicial action.

*Governmental Unit Liability Background Information:* Between FY 1996 and FY 2002, the state paid 18 tort claims valued between \$250,000 and \$300,000. Since these settlements were near the limit for tort claims paid by the state, it is assumed that these claims might be higher if the settlement cap were raised to either \$750,000 (for 2005 through 2006) or \$1,250,000 (after 2006).

**Explanation of State Revenues:** The Department of Insurance administers the Political Subdivision Risk Liability Fund. This bill may result in requiring participating governmental entities to pay more into the Political Subdivision Risk Liability Fund. If total payments from the fund exceed total available balance in the fund, the members may be required to pay an additional assessment to pay these liabilities and replenish the fund.

**Explanation of Local Expenditures:** This bill could increase the per person damage awards that local entities would be required to pay as a result of a successful lawsuit. Under current law, damage awards cannot exceed \$300,000 for the injury to, or death of, one person in any single occurrence. This bill will raise the maximum award for the injury or death to one person from \$300,000 to \$1,250,000. However, this bill does not increase the total liability per occurrence. The per occurrence liability remains \$5 M. The total additional cost to local units is unknown and subject to judicial action.

This bill may result in requiring participating governmental entities to pay more into the Political Subdivision Risk Liability Fund. If total payments from the fund exceed total available balance in the fund, the members may be required to pay an additional assessment to pay these liabilities and replenish the fund.

**Explanation of Local Revenues:**

**State Agencies Affected:** All.

**Local Agencies Affected:** All.

**Information Sources:** Jennifer Thuma, Legislative Counsel, Attorney General's Office, 317-233-6143; Auditor of State; Adam Crowe, Deputy Commissioner, Department of Insurance, 317-232-5693.

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